

**People v. Burns, 2016 IL 118973**

Appellate citation: 2015 IL App (4th) 140006

JUSTICE KILBRIDE delivered the judgment of the court, with opinion.  
Justices Freeman, Burke, and Theis concurred in the judgment and opinion.  
Chief Justice Garman specially concurred, with opinion.  
Justice Thomas dissented, with opinion, joined by Justice Karmeier.

A warrantless dog sniff for marijuana at an apartment door was found to violate the fourth amendment in this Champaign County case. The defendant lived on the third floor of a 12-unit apartment building in Urbana. Facing her apartment was one other unit, a landing, the stairwell, and a storage area. The building was usually kept locked at its two exterior entrances. In the early morning hours of January 10, 2013, police brought a drug-detection dog to the defendant's apartment door, and he alerted to the presence of narcotics there. There was no search warrant. However, based on this, and other information, a search warrant was later issued. It is not known how the officers gained access to the building.

Subsequent execution of the search warrant yielded marijuana. The defendant was charged with the Class 2 felony of unlawful possession of cannabis with intent to deliver. She challenged the dog sniff as a violation of the fourth amendment, and she filed a motion to suppress the evidence seized pursuant to the warrant. The trial court granted the motion on the basis of a 1978 case from the Appellate Court, Fourth District which had never been overruled. The appellate court affirmed, and the State brought this appeal.

In this decision, the Illinois Supreme Court said that there is law allowing dog sniffs, but those are motor vehicle cases involving traffic stops. What is involved here is a home. The court said that, here, the front door and the landing outside the apartment were part of the "curtilage" of the defendant's residence, which is protected by the fourth amendment. The principles of curtilage were recently discussed by the United States Supreme Court in a 2013 case involving a house with a porch, rather than an apartment building. Here, although it was claimed that the officers acted in good faith, what they did was not supported by Illinois precedent. With the dog sniff omitted from consideration, the other evidence in the warrant application was not sufficient to show probable cause, and the warrant should not have been issued. The Illinois Supreme Court held that the warrantless use of a drug-detection dog at 3:20 a.m. at defendant's apartment door, located within a locked apartment building, violated defendant's fourth amendment rights, and the motion to suppress was properly granted. The results below were affirmed.